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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,152	10/06/2003	Douglas B. Vaden	21755.00	5738
7590 05/03/2004			EXAMINER	
Richard C. Litman LITMAN LAW OFFICES, LTD. P.O. Box 15035 Arlington, VA 22215			CHIU, RALEIGH W	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

10/678,152

Applicant(s)

VADEN, DOUGLAS B.

Examiner

Raleigh Chiu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

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## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/06/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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**DETAILED ACTION**

***Claim Rejections - 35 USC §§ 102 and 103***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, 6, 8-11, 13, 16, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 4,204,682 (Brown).

Regarding claims 1, 10 and 11, Figures 1-5 of Brown show first and second target receptacles 22, a playing surface and flat, rigid tossing discs 28. Brown further discloses the width of the target receptacles being greater than the width of the

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tossing discs. See column 2, lines 46-52 and column 3, lines 18-21.

Regarding claims 3 and 13, Brown discloses the width and length of the receptacles to be approximately 4.5 inches; such a dimension is broadly considered to be about 3 inches.

Regarding claims 6 and 16, Brown discloses the disc width to be approximately 3.5 inches; such a dimension is broadly considered to be about 2 inches.

Regarding claims 8, 9, 18 and 19, Brown discloses the concept of using groups of differently colored discs. See column 3, lines 23-29.

With further regard to claims 10 and 11, Brown teaches the method of positioning players at a first receptacle, tossing discs toward a second receptacle, calculating a score, positioning the players at the second receptacle, throwing the discs toward the first receptacle and repeating until a predetermined number of points has been achieved. See column 3, lines 35-63 and column 4, line 62 through column 5, line 15.

4. Claims 2, 4, 5, 7, 12, 14, 15, 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown as applied above.

Regarding claims 2 and 12, Brown discloses a tossing distance of 30-50 feet. See column 1, lines 40-43. It would

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have been obvious to one of ordinary skill in the art to reduce the distance between target receptacles to change the difficulty of the game; to further reduce game playing dimensions to accommodate smaller children is old and well-known in the art.

Regarding claims 4, 5, 14 and 15, Brown discloses the use of any high impact plastic or lightweight metal to construct the target receptacles. See column 2, lines 46-52. Electrical metal tubing and polyvinyl chloride pipe are considered to be well-known light metals and high impact plastics, respectively.

Regarding claims 7 and 17, Brown teaches the use of a heavy metal to construct the discs. See column 3, lines 14-18. Steel is considered to be a well-known heavy metal.

Regarding claim 20, Brown teaches the concept of providing different point values for discs tossed into receptacles and objects overhanging the receptacle (column 4, lines 1-22); providing a different point value for discs landing near, but not into the receptacle (column 4, lines 23-62); and canceling equal value scores for opponents (column 4, lines 1-13). The assignation of specific point values is considered to be an obvious matter of design choice to vary the options of keeping score in the game.

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**Conclusion**

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

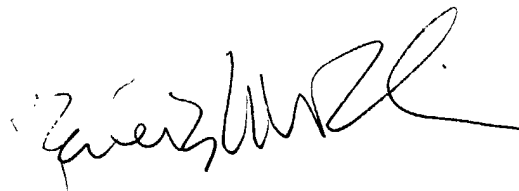
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raleigh Chiu whose telephone number is (703) 308-2247. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes, can be reached on (703) 308-1806.

The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Raleigh W. Chiu  
Primary Examiner  
Technology Center 3700

RWC:dei:feif  
28 April 2004

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